IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

WEDNESDAY, THE 14TH FEBRUARY 2007 / 25TH MAGHA 1928

CRL.A.No. 459 of 1999()

(CC.216/1997 of CHIEF JUDICIAL MAGISTRATE COURT, PATHANAMTHITTA DT.23.4.1999.)

.....

APPELLANT: COMPLAINANT

JOLLY PHILIP, THOPS COLOUR LAB,
MAIN ROAD, PATHANAMTHITTA.

BY ADV. SRI.T.K.MARTHANDAN UNNITHAN

RESPONDENTS: ACCUSED AND STATE OF KERALA

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1. **K.A.ABRAHAM , KALLOORATHU HOUSE,**
   OMALLOOR P.O., PUTHENPEEDIKA,
   PATHANAMTHITTA.

2. **STATE OF KERALA REP.BY THE**
   PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
   ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.K.M.FIROZ

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 14/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY, J.

Crl. Appeal No. 459 of 1999

Dated this the 14th day of February, 2007

Judgment

This appeal is filed against the order of acquittal. Even though notice was ordered on 3.9.1999, no effective steps were taken to serve the notice on the respondent/accused. Without serving notice on the accused, an order of acquittal cannot be reversed. Counsel for the appellant submitted that in spite of the letters written, there is no response and, therefore, no instructions can be recorded. On going through the merits of the case, I also find that trial court has considered the evidence and came to a possible finding. The trial court found as follows:

> "..... When the accused as DW1 has a case that he had not received any amount under Ext.P1 and there was no transaction between himself and PW1 and three signed blank cheques were entrusted with PW1 at the time when credit facility was given to the accused, PW1 should have examined any of the above persons to prove his case that he had given Rs.55,000/- to DW1 on 12.2.1997 in discharge of which Ext.P1 was issued by the accused. When a specific question was put to DW1 in cross-examination that it was Gigi Varghese, the owner of Thops Colour Lab who had granted credit facility to him, his

answer is that it was by PW1. In as much as the complainant has not adduced any independent evidence to substantiate his case that he gave Rs.55,000/- to DW1 on 12.2.1997 in discharge of which Ext.P1 was issued in his favour by the accused putting the date 12.3.1997 and the evidence and circumstances available would go to show that at the time when credit facility was granted to the accused by the Thops Colour Lab, Pathanamthitta, three signed blank cheques were obtained from him by PW1 and the writings were subsequently written in Ext.P1, and admittedly the accused was a commission agent of the Thops Colour Lab, Pathanamthitta from September 1996 onwards where PW1 is also working, I am of the view that Ext.P1 was not properly executed by DW1 in favour of PW1, that it is not supported by consideration and that the case put forward by the accused that three blank signed cheques were obtained from him by PW1 when credit facility was given to him from the Thops Colouor Lab and the present complaint was filed by making use of one of the blank cheques by PW1 who is a close relation of the owner of the Thops Colour Lab when the amount due to the accused was demanded is true. If that be so, I find that the case of PW1 that the accused had received a sum of Rs.55,000/- from him on 12.2.1997 and in discharge of the said debt,

> he issued Ext.P1 dated 12.3.1997 drawn on the Corporation Bank, Pathanamthitta Branch cannot be accepted."

The defence version is probable and complainant was not able to prove that the cheque was issued not for a legally enforceable liability. In any event, I am not in a position to say that the view of the trial court is not plausible or perverse. Hence, the appeal against the acquittal of the accused is dismissed.

J.B. KOSHY
(JUDGE)

vaa

J.B.Koshy J.

Crl.A. No. 459 of 1999

Judgment

14-2-2007